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An Ideal Time for the Coal Industry to Act

EPA's proposed rule for new coal plants has been called a "war on coal". The "war on coal" occurs because the standard in the proposed rule can only be achieved by the installation of a costly technology called CCS, carbon capture and sequestration, which virtually no utility can neither afford nor implement and will result in a ban on the construction of new coal plants.

The CCS technology has been denigrated by a panel of EPA administrative law judges in that they have just recently concluded that the installation of the technology will be overly costly. EPA's proposed rule for new plants pre-dates the aforementioned decision made by its administrative law judges and therefore opens the door for the coal industry to act immediately to seek the reasoned relief explained below.

To this end months ago CRE advised the battalion of utilities, trade associations, law firms and lobbyists working on this matter that if EPA complied with the Data Quality Act (DQA) in a manner previously noted by the EPA Inspector General on a related issue, that the issue regarding the commercial availability of the CCS technology would be reviewed by an impartial panel of experts not affiliated with EPA and with input from the public and stakeholders.

The CRE Letter to EPA is here http://www.thecre.com/forum10/?p=198 which in summary merely requests that EPA conduct a peer review of CCS as required by the Data Quality Act; an action which EPA has refused to implement as of this date and therefore makes it in violation of existing law and therefore amenable to a corrective action by the court.

Legal analyses conducted by CRE concludes that a judicial action which requests that the court direct EPA to comply with an existing law, the Data Quality Act, can and should be taken prior to the issuance of a final rule for new coal fired plants.

The aforementioned legal action would be strengthened if the EPA Inspector General were to issue a sequel to its landmark report on EPA's gross failure to comply with the peer review requirements of the Data Quality Act in its endangerment finding but focusing this time on the proposed regulation for new coal fired plants, HERE

It would seem that a clear violation of the Data Quality Act coupled with the reinforcing decision by both an EPA administrative law body and by one or more decisions of the EPA Inspector General would bring the most risk adverse individuals who are fearful of retaliation out of seclusion.

In that the Administration has proposed rules for new coal plants and is expected to release proposed rules for existing plants next week, the Administration will have put all its cards on the table. The narrow window of time available prior to the issuance of a final rule for new plants should be used to seek and obtain the judicial relief described above

because the resultant action is science based, economically sound and is grounded in well established principles of administrative law. The recommended action will be further enhanced when the underlying rational is explained to the American public and in full recognition of the fact that the rule for existing plants can not be issued in final form until which time EPA has first issued a final rule on new plants.

It is time to change from a "war on coal" to a "war by coal" to exercise their legal rights.

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